

DISTRICT OF MAINE

Defendant

Civil No. 88-0057 P

¹ In several prior orders in this case, the court has, among other actions, denied the plaintiffs' motion for a temporary restraining order and a preliminary injunction, the plaintiff McEachern's motion for class certification and his motions for reconsideration of these orders and to sever his claims from those of his co-plaintiffs.

The plaintiffs claim that the MSP law library, its paralegal, the legal facilities at other Maine correctional centers² and the various administrative rules regarding access to these resources are so inadequate as to constitute a denial of the plaintiffs' fourteenth amendment right of access to the courts. Relying on the affidavits of Martin Magnusson, Warden of the MSP, and James Howard, Assistant Superintendent of the Maine Correctional Center ("MCC"), the defendant's statement of material facts establishes that the law libraries at these two facilities contain extensive federal and state materials;³ that general population prisoners at MSP have access to the law library for a total of 25 hours per week; that MSP employs an Inmate Advocate, an Inmate Paralegal and seven correctional workers, all of whom provide legal assistance to inmates incarcerated thereat; that MSP prisoners in protective custody or in the segregation unit may request books from the law library (which requests are filled daily) and may request assistance from the Inmate Paralegal, the Inmate Advocate or correctional caseworkers in legal matters; that prisoners housed at the Bolduc Minimum Security Unit may also request books from the MSP law library (which requests are likewise filled daily), may request transportation back to the MSP for purposes of using the law library or may request a transfer to the MSP; that prisoners at the MCC have access to the law library for a total of 15 hours per week⁴ and may request additional time when necessary; that the MCC employs an Inmate Advocate and five correctional caseworkers who provide legal assistance to all inmates at MCC; that high security inmates

² At issue are the legal resources and policies regarding access to those resources at only those System facilities which have housed the plaintiffs: the MSP at Thomaston, the Bolduc Minimum Security Unit at South Warren and the MCC at Windham.

³ The defendant's statement includes the assertions that the collections of the law libraries at the MSP and the MCC exceed requirements set forth in *Bounds v. Smith*, 430 U.S. 817 (1977). Because these assertions state a legal conclusion, I do not consider them as undisputed material *facts*. I note that the Magnusson and Howard affidavits set forth in detail the contents of each library in question.

⁴ The statement of material facts recites 12 hours per week, but the affidavit of James Howard, on which the statement relies, indicates 15 hours per week.

or segregated inmates at MCC may request volumes from the law library and may request assistance from the Inmate Advocate or from correctional caseworkers; and that, when legal materials are discovered missing from the MSP law library, replacement volumes are ordered immediately. In addition, I accept as true for purposes of this motion the uncontroverted sworn statement of the defendant Allen that although "[t]he position of inmate paralegal was temporarily vacated due to transfer of the then paralegal . . . [it] was immediately filled on an interim basis and has now been filled on a permanent basis." Affidavit of Donald L. Allen.

The plaintiffs' complaint specifically alleges that the paralegal at the MSP lacks training, that the MSP law library lacks an adequate number of copies of the Maine Rules and the Federal Rules, that inmates have access to only one typewriter, that inmates at facilities other than the MSP lack access to a card index and that inmates at other in-state correctional facilities face difficulties in gaining access to the materials at the MSP library. *See* Complaint §§ 15-64.

In *Bounds v. Smith*, 430 U.S. 817 (1977), the Supreme Court reaffirmed its result in *Younger v. Gilmore*, 404 U.S. 15 (1971), by holding that

the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing adequate law libraries or adequate assistance from persons trained in the law.

Id. at 828. Pursuant to *Bounds*, this court has tested and found adequate the legal research facilities provided at MSP to Protective Custody and Administrative Segregation inmates. In *Lovell v. Brennan*, 566 F. Supp. 672 (D. Me. 1983), *aff'd on other grounds*, 728 F.2d 560 (1st Cir. 1984), the court specifically reviewed the law book collection of the MSP library and the various means by which legal assistance is made available to prisoners. The court concluded that the state plan, as a whole, afforded those inmates their constitutionally-guaranteed right of meaningful access to the courts. *Id.* at 696-97.

Based on the plaintiffs' failure to adequately support their conclusory allegation that conditions regarding access to legal materials or assistance has deteriorated since the date of the *Lovell* decision, this court has found that the plaintiffs would be unlikely to succeed on the merits of their claim and thus denied the plaintiffs' motion for a temporary restraining order and preliminary injunction.⁵ Based on the defendant's statement of material facts and the plaintiffs' failure to submit any additional material or to oppose the motion for summary judgment in any way, I find that the plaintiffs have also failed to demonstrate the continued existence of any genuine issue of material fact.

In *Lovell*, 566 F. Supp. at 682, 696-97, the court found, in relevant part, that the law book collection of the MSP library was up to date and sufficiently extensive; that general population inmates had access to that library for about 27-1/2 hours a week; that segregated inmates could receive paralegal services from the inmate advocate on a weekly basis; that the Office of Advocacy assisted inmates in obtaining legal materials and in referrals for legal assistance; and that the Department of Corrections had created a full-time advocate position at the prison to furnish legal assistance to segregated inmates. The defendant's statement of material facts establishes that, at present, general population inmates have 2-1/2 hours less time per week in the library but that legal assistance is more readily available. These provisions are well within recent guidelines established by the First Circuit

⁵ Plaintiff McEachern had submitted an affidavit in support of his motions for reconsideration which this court denied. *See* n.1, *supra*. In that affidavit, McEachern stated that, "[u]pon information and belief, the person who has taken the place of the former para-legal at the Maine state prison is untrained in Law, and is unable to provide even the basic research information to prisoner's who are in the segregation unit's of the Maine state prison, or in the protective custody units of Maine state prison." Affidavit of McEachern Concerning the Placement of Michaud (Docket Item #40). This assertion was unaccompanied by any statement regarding the legal training of the former paralegal, nor did it reflect the personal knowledge required of affidavits submitted in support of applications for preliminary injunctive relief. This court thus found it inadequate to support a request for preliminary injunctive relief, *see* Memorandum Order on Miscellaneous Pretrial Motions p. 5. Likewise, I find this assertion inadequate to establish the existence of a genuine issue of material fact. Fed. R. Civ. P. 56(e); 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* ' 2738 (1983).

Court of Appeals in *Cepulonis v. Fair*, 732 F.2d 1, 4, 6 (1st Cir. 1984) (implicitly affirming a lower court finding that access for only three hours a month to legal advice and materials was inadequate and emphasizing that *Bounds* did not require *both* legal assistance *and* access to an adequate law library).

I conclude that the defendant has demonstrated the absence of any genuine issue of material fact and that he is entitled to a judgment as a matter of law. Accordingly, I recommend that his motion for summary judgment be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 28th day of July, 1989.

David M. Cohen
United States Magistrate